

**IN THE UNITED STATE'S DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**STEPHEN TAPP,
Plaintiff,**

vs.

**UNIVERSITY OF TEXAS HEALTH
SCIENCES CENTER AT HOUSTON-
SCHOOL OF DENTISTRY, DR. JOHN A.
VALENZA, D.D.S., DEAN, AND SERGEANT
J. TAYLOR, BOTH INDIVIDUALLY
Defendants.**

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Civil Action No. 4:11-CV-02971

**PLAINTIFF'S OPPOSED MOTION FOR LEAVE OF COURT TO FILE
PLAINTIFFS' SECOND AMENDED COMPLAINT**

NOW COMES Stephen Tapp, Plaintiff herein, by and through their attorney, Martin J. Cirkiel from the law firm of Cirkiel & Associates, P.C, and brings this, his *Motion for Leave of Court to File Plaintiffs' First Amended Complaint* and in support thereof, would respectfully show:

1. Plaintiff filed his *Original Complaint* on August 11, 2011.
2. On October 11, 2011 Defendant, University of Texas Health Sciences Center at Houston-School of Dentistry ("UTHealth") filed their *Motion to Dismiss*.
3. In response, Plaintiff filed, *Plaintiffs First Amended Complaint and Jury Demand* on November 1, 2011, adding two new Defendants, John A. Valenza, D.D.S., Dean, and Sergeant J. Taylor. They have not answered as of this writing.
4. On, November 4, 2011, Defendant, UTHealth, filed their *Amended Motion to Dismiss*, addressing, among other things, arguments relative to the Statute of Limitations.
5. Plaintiffs now seek Leave of Court to file their *Second Amended Complaint* pursuant to

Fed. R. Civ. P. 15(a)(2), which provides that leave to amend should be freely given, in order to cure those deficiencies that may have been present in their *Fist Amended Original Complaint* and thus properly state a claim upon which relief may be granted.

6. “[A] motion for leave to amend should not be denied unless there is ‘undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed [or] undue prejudice to the opposing party by virtue of allowance of the amendment.’” *U.S. ex rel. Willard v. Humana Health Plan of Texas Inc., et al.*, 336 F.3d 375, 386 (5th Cir. 2003) (quoting *Foman v. Davis*, 371 U.S. 178 (1962)).
7. This motion is sought so that justice may be served and not for the purpose of delay or in bad faith.

Respectfully submitted,
Cirkiel & Associates, P.C.

By: /s/ Martin J. Cirkiel
Martin J. Cirkiel, Esq.
State Bar No. 00783829
1901 E. Palm Valley Blvd.
Round Rock, Texas 78664
(512) 244-6658 [Telephone]
(512) 244-6014 [Facsimile]
marty@cirkielaw.com

ATTORNEYS FOR THE PLAINTIFFS

CERTIFICATE OF CONFERENCE

This is to certify that on the 28th day of November, 2011, I conferred with counsel for Defendant, the Honorable Mishell B. Kneeland, who is OPPOSED to this Motion

/s/ Martin J. Cirkiel
Martin J. Cirkiel, Esq.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded to the following parties on this 28th day of November, 2011 by Notice of Electronic Filing from the Clerk of the Court:

Honorable Mishell B. Kneeland, Attorney
Texas Bar No. #24038256
Southern District Federal ID #313250
Assistant Texas Attorney General
Post Office Box 12548, Capitol Station
Austin, Texas 78711-2548
(512) 463-2120 [Telephone]
(512) 320- 0667 [Facsimile]

ATTORNEYS FOR DEFENDANT, UTHHealth

/s/ Martin J. Cirkiel
Martin J. Cirkiel, Esq.